to pay straightaway the road metalling bill of the Public Works Department.

The last relevant letter is the defendant's letter to Messrs. Hilborne, Chung & Co. dated the 20th May, 1963. In my opinion this is very important. In it the defendant categorically asserts that a formal contract was signed on the 9th April, 1963, and that the date of completion in that contract was the 30th April, 1963. And this letter written by the defendant to his own solicitors and sent by registered post received no reply at all. Was the defendant, as far back as May, 1963, fabricating false evidence by putting on record that a contract was signed on the 9th April, 1963, or was he asserting the truth? Furthermore, both the plaintiff and Sabapathy say that, on the 9th April, 1963, it was agreed between the parties that completion was to take place on the 30th June, 1963, and that the defendant was to give vacant possession upon completion. If, indeed, such an agreement was reached, why was a formal agreement not signed on that day setting out those terms? After all, the parties did intend to sign a formal agreement and Sabapathy admits that he had prepared a draft agreement.

In my view, when the evidence of the plaintiff, the defendant, and of Sabapathy is considered in the light of the correspondence to which I have referred, one is left in no doubt at all as to where the truth lies. Sabapathy on his admission is quite capable of telling a lie and is a totally unreliable witness. As for the plaintiff, in my view, he is not speaking the truth when he says that no formal contract was signed on the 9th April, 1963. He did not impress me as a truthful witness and I therefore reject his evidence. The defendant impressed me as a truthful witness. I accept his evidence that a formal contract was signed on the 9th April, 1963, in which the date of completion was set out as the 30th April, 1963.

Counsel for the plaintiff submits that the defendant was not a truthful witness because the defendant maintained that he saw Mr. Hilborne in his office in March, 1963, whereas Mr. Hilborne's note of the interview shows that the interview took place on the 8th April, 1963. In my view, the date on which the interview took place is not of much importance and the defendant could very well be mistaken as to the date. What is important is what took place at that interview and Mr. Hilborne admitted under cross-examination that he was not prepared to deny the defendant's version of the interview.

In the light of the evidence before me, I hold that the plaintiff and the defendant signed a formal contract on the 9th April, 1963, whereby the plaintiff agreed to purchase from the defendant the property in question at the price of $1 per square foot without vacant possession and the completion was to take place on the 30th April, 1963. The sale was not completed on the 30th April, 1963, and on the 20th May, 1963, the defendant gave notice making time the essence of the contract. In my view, the five days' notice was under the circumstances reasonable because according to Sabapathy all that was required to be done was to draft a conveyance and engross it and this according to him would have taken only two days. After the 25th May, 1963, the plaintiff was, in my opinion, in breach of contract and the defendant therefore succeeds on his counterclaim.

In the result, the plaintiff's claim against the defendant is dismissed with costs the deposit of $2,700 in the hands of the plaintiff's solicitors is ordered to be paid out to the defendant; and the plaintiff is ordered to pay the defendant's costs of the counterclaim.

Claim dismissed; Judgment for the defendant on the counterclaim.

Solicitors: *L. Rayner; Donaldson & Burkinshaw.*

CHAN TIAN HOCK v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi J.) May 23, 1966]

[Muar — Criminal Appeal No. 12 of 1965]

Road Traffic — Permitting person not holder of licence to drive a motor vehicle — Meaning of "permit" — Road Traffic Ordinance, 1958, s. 146.

The appellant appealed against his conviction on charges of permitting an unlicensed person to drive a motor vehicle and permitting the vehicle to be used without a third party insurance in force. The facts were that the appellant took his car to a motor mechanic for repairs. He left the car there and removed the key. Subsequently the mechanic was found driving the motor car on a public road. The mechanic did not have a driving licence.

Held: the learned magistrate erred in drawing the inference in this case that the appellant had failed to forbid the mechanic to drive the car. There was no evidence that the appellant had given permission to the mechanic to drive the car and there was evidence in the fact that the key of the car had been removed by the appellant to rebut any inference that general permission to drive the car had been given to the mechanic.

Case referred to:—

(1) *McLeod (Houston)* v. *Buchanan* [1940] 2 All E.R. 179.

CRIMINAL APPEAL.

M. S. Miranda for the appellant.

Tunku Zaid bin Tunku Zakaria (Deputy Public Prosecutor) for the respondent.

Azmi J.: This is an appeal against the conviction of the appellant on the following two charges:

1st Charge:

"That you on 16.4.65 at about 2.30 p.m. at Jalan Payamas, Tangkak, in the District of Tangkak, in the State of Johore, being the registered owner of motor car No. AA. 9348, did permit another person who was not the holder of a driving licence authorising him to drive such class of vehicle, and that you have thereby committed an offence under section 25(2) and punishable under section 146(1)(d) of the Road Traffic Ordinance No. 49 of 1958."

2nd Charge:

"That you on the same date, time and place, being the registered owner of motor car No. AA. 9348, did permit the said vehicle to be used on road while there not in force in relation to the user of the said vehicle such a policy of insurance or such a security in respect of third party risks, and that you have thereby committed an offence under section 74(1) and punishable under section 74(2) of the Road Traffic Ordinance No. 49 of 1958."

The facts for the prosecution may be summarised as follows. The appellant took his car, AA. 9348, to Lee Yam, a motor mechanic, for certain repairs. In the afternoon Lee Yam was found driving the motor car on a public road whilst he was not holding a driving licence nor was he covered by a third party insurance policy.

On 8th August, 1965, Lee Yam was convicted of these offences and fined $70 in all. Lee Yam said that the appellant did not tell him that he should not drive the car, and went further to say that if the appellant had told him not to do so, he would not have done it.

On the above evidence the learned magistrate called for the defence. The appellant said that he took the car, as was stated, to Lee Yam for repairs, but as the latter was unable to do the repairs then, appellant left his car with him. He also said that when he left the car he took away the key from the car. In answer to a question put by the court the appellant said that he knew subsequently that Lee Yam drove his car but he himself did not make a police report in the matter.

From the judgment of the learned magistrate it would appear that the charges against the appellant had been proved on the following grounds:

(1) That appellant did not tell Lee Yam not to drive his car.

(2) That when appellant said he had taken away the key, he did not specifically say whether it was the ignition key or the petrol tank key.

As a matter of fact when the appellant said he removed the key from his car, it was in answer to cross-examination by the prosecution.

The learned magistrate did not, however, discuss in his judgment the meaning of "to permit another person to drive".

I found that the word "permit" is defined by Lord Wright in the case of *McLeod (Houston)* v. *Buchanan.*[1] At page 187 his Lordship said:

"To 'cause' the user involves some express or positive mandate from the person 'causing' to the other person, or some authority from the former to the latter, arising in the circumstances of the case. To 'permit' is a looser and vaguer term. It may denote an express permission, general or particular, as distinguished from a mandate ....However, the word also includes cases in which permission is merely inferred. If the other person is given the control of the vehicle, permission may be inferred if the vehicle is left at the other person's disposal in such circumstances as to carry with it a reasonable implication of a discretion or liberty to use it in the manner in which it was used. In order to prove permission, it is not necessary to show knowledge of similar user in the past, or actual notice that the vehicle might be, or was likely to be so used, or that the accused was guilty of a reckless disregard of the probabilities of the case, or a wilful closing of his eyes. He may not have thought at all of his duties under the section."

One of the grounds of appeal was that the learned magistrate erred in law and in fact in drawing inferences unfavourable to the appellant in that the key of the car removed by the appellant might not have been the ignition key, particularly when the appellant was not cross-examined as to what type of key he had removed from the car. In the context of the question it was clear to me that the prosecution at that time anyway had understood that the key could have meant the ignition key, and I agree with the defence counsel that the learned magistrate should not have taken the inference he did and he should have given the benefit of the doubt to the appellant and acquitted him.

To my mind the learned magistrate also erred in drawing the inference that the appellant had permitted the use of the car merely because the appellant had failed to forbid Lee Yam to drive the car. In my view not only was there no evidence that the appellant had given permission to Lee Yam to drive the car, but there was no evidence from which any such permission may be inferred. I should have thought that the fact that the key, which can be understood to be no other than the ignition key, had been taken away by appellant would be sufficient evidence to rebut any inference that he had given Lee Yam general permission to drive the car.

For the above reasons I allowed the appeal, set aside the conviction and directed that the fine, if already paid by the appellant, be refunded to him.

Appeal allowed.

Solicitors: *Mitra & Miranda.*